SUPREME COURT, U.S.

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# Supreme Court of the United States

October Term, 1966

No. 1330

GRACE LINE, INC. and S.S. SANTA LUISA,

*Petitioners,*

—against—

JOSEPH SCOPAZ and MILES PEROS,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioners (hereinafter referred to as petitioner), pray for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered on January 30, 1967.

### Opinions of the Courts Below

The memorandum decisions of the United States District Court for the Southern District of New York are unreported. They appear at pages 12a-13a and 33a-34a, of the Appendix of the Court of Appeals. The opinion of the Court of Appeals is reported at 372 F. 2d 403, and appears at pages 82a-89a, of the said Appendix, as well as in the Appendix to this petition.

## Jurisdiction

The judgment of the Court of Appeals was entered on January 30, 1967. The jurisdiction of this Court is invoked under Title 28 U. S. C. §1254 (1).

## Questions Presented

1. Whether a longshoreman, in the direct employ of a private shipowner who has not delegated the control and operation of the vessel to a bareboat charterer, may sue his shipowner employer, or its vessel, for liability beyond statutory compensation because of injuries suffered as a result of the ship's unseaworthy condition, or whether §5 of the Longshoremen's and Harbor Workers' Compensation Act (Longshoremen's Act) 33 U. S. C. §905, provides the longshoreman with his exclusive remedy?

2. Has *Reed* v. *The YAKA*, 373 U. S. 410 (1963), imposed liability, other than payment of statutory compensation benefits, upon a shipowner employer of a longshoreman for injuries resulting from unseaworthiness, in the absence of an express or implied obligation of the employer to a third-party for such unseaworthiness?

3. Did the court below err in holding that there are two different standards of exclusivity of remedy under federal compensation acts for injuries due to unseaworthiness, one applicable only where the federal government is the shipowner, and the other applicable to private shipowners?

## Statutes Involved

The statutory provisions involved are 33 U. S. C., §§905 and 933 (a) of the Longshoremen's and Harbor Workers' Compensation Act; 5 U. S. C., §8116 (c) of Public Law 89-554 approved September 6, 1966, formerly 5 U. S. C. §757 (b) of the Federal Employees' Compensation Act, which provide as follows:

33 U. S. C. Section 905:

"EXCLUSIVENESS OF LIABILITY. Sec. 905. The liability of an employer prescribed in Sec. 904 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Chapter, or to maintain an action at law, or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee."

33 U. S. C. Section 933 (a)

"If on account of a disability or death for which compensation is payable under this Chapter the person entitled to such compensation determines that

some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person."

5 U. S. C. Section 8116 (c)

"(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel."

## Statement

Respondents were longshoremen-employees of petitioner Grace Line Inc., the title owner of the vessels on which respondents were injured. These vessels were not bareboat chartered to a third party but were solely owned, operated and controlled by petitioner.

Respondent Peros sued petitioner Grace Line Inc. and the SS SANTA LUISA, *in personam* and *in rem*, while respondent Scopaz sued Grace Line Inc. *in personam*.

Petitioner had complied with the provisions of the Longshoremen's Act and pursuant thereto paid statutory compensation benefits to respondents and also paid their medical expenses. Their suits for damages subsequently followed.

By stipulation, the parties agreed to the facts and damages. This left for determination by the court only the legal issue as to whether §5 of the Longshoremen's Act provided respondents with their exclusive remedy.

The District Court, on motion for summary judgment, rejected the defense that the exclusive remedy provision of the Longshoremen's Act barred recovery of damages directly against an employer-shipowner and directed judgment for respondents.

The Court of Appeals for the Second Circuit recognized that if the employer-shipowner had been the United States instead of a private shipowner, the employee would be restricted to compensation benefits, although injured by an unseaworthy vessel, citing at footnote 6 (372 F. 2d 403, 406) of its opinion *Johansen* v. *United States*, 343 U. S. 427 (1952); *Patterson* v. *United States*, 35 U. S. 495 (1959); *United States* v. *Demko*, 385 U. S. 149 (1966). In affirming the decision of the lower court, however, the Court of Appeals relying on *Reed* v. *The YAKA, supra*, held that considerations of exclusivity are quite different when the federal government is involved rather than a private individual. That Court of Appeals misread the *YAKA* decision as holding "in the clearest terms * * * that §5 of the Longshoremen's Act did not prevent an employee from suing his employer for breach of the warranty of seaworthiness, when his employer was also the owner of the vessel," and concluded the petitioner's arguments "should be addressed to Congress and not to this Court." Yet

just a few days ago the First Circuit on April 20, 1967, in *Alcoa Steamship Company, Inc.* v. *Perez Rodriguez, infra,* found "it difficult to determine the intended scope of the *YAKA* case."

## Reasons for Granting Writ

1. The importance of the questions presented herein was recognized by this Court in *Jackson* v. *Lykes Bros. Steamship Co.,* No. 575, October Term 1966, which was argued on April 12, 1967. Certiorari was granted in that case on a petition which urged the conflict of the decision there sought to be reviewed with *Reed* v. *YAKA* as one of the reasons for granting the writ. However, that case may not resolve some of the questions involved here concerning the extent of the liability of an actual shipowner for injuries to a longshoreman resulting from breach of the warranty of seaworthiness in an admiralty suit brought *in personam* as well as *in rem.*

2. The Court of Appeals for the First Circuit in *Alcoa Steamship Company Inc.* v. *Perez Rodriguez,* decided on April 20, 1967 (not yet reported), confessed that it found "it difficult to determine the intended scope of the *YAKA* case." It went on, however, to interpret the case in conflict with the interpretation given to *YAKA* by the Second Circuit below, saying:

> "* * * For the fact is that the longshoreman's suit in that case was not brought against his employer but rather against the vessel on which he was injured, which was in fact owned by a third party, Waterman Steamship Corporation. It was the shipowner which brought in the longshoreman's employer, a bareboat charterer of the vessel, as a third party

defendant alleged to be liable over to the shipowner under the indemnity terms of the charter. *Reed* v. *The YAKA*, D. C. Pa. 1960, 183 F. Supp. 69, 77. It was on this theory, under the doctrine of *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 1956, 350 U. S. 124, that the district court entered the judgment in favor of the longshoreman which the Supreme Court ultimately affirmed."

It is respectfully submitted that the interpretation placed upon *YAKA* by the First Circuit is correct, and conforms with this Court's recent decision in *United States* v. *Demko*, 385 U. S. 149 (1966), wherein the rule of exclusivity of remedy under compensation laws in general was recognized, Mr. Justice Black, saying (at p. 151):

> "Historically, workmen's compensation statutes were the offspring of a desire to give injured workers a quicker and more certain recovery than can be obtained from tort suits based on negligence and subject to common-law defenses to such suits. Thus compensation laws are practically always thought of as substitutes for, not supplements to, common-law tort actions. A series of comparatively recent cases in this Court has recognized this historic truth and ruled accordingly. *Johansen* v. *United States*, 343 U. S. 427 and *Patterson* v. *United States*, 359 U. S. 495, for instance, are typical of the recognition by this Court that the right of recovery granted groups of workers covered by such compensation laws is exclusive. Such rulings of this Court have established as a general rule the exclusivity of remedy under such compensation laws."

3. The *Demko* case went further in limiting the liability to compensation than the cited *Johansen* and *Patterson*

cases. Those maritime claim cases involved the specific exclusivity provisions of the Federal Employee's Compensation Act that are almost identical with the exclusivity provisions of the Longshoremen's Act in contrast to 18 U. S. C. §4126 which has no words of exclusion. Yet this Court held that the presumption is that a compensation act is exclusive unless a contrary congressional intent appears, stating that "There is no indication of any congressional purpose to make the compensation statute in 18 U. S. C. §4126 non-exclusive."

It is thus clear that the Government's liability to its employees is limited to compensation under the Federal Employee's Liability Act, and that this substituted limited liability in place of liability under the general maritime law is not grounded on sovereign immunity concepts, as the court below suggests, but on the general principle that a compensation statute excludes all liability of an employer to an employee other than compensation.

Since the exclusive remedy provision of the Federal Employees' Liability Act is almost identical with that of the Longshoremen's Act and both must be construed the same (*Weyerhauser S.S. Co.* v. *United States*, 372 U. S. 597, 602 (1963), there is no sound basis for the Second Circuit interpreting the exclusivity provisions differently and applying one standard to the federal government and a less favorable standard to private shipowners. The various federal compensation acts should be construed in harmony, particularly with respect to maritime workers.

4. The Second Circuit misconstrued the scope of the *YAKA* case and it overlooked this Court's subsequent decision in *Italia Soc.* v. *Oregon Stevedoring Co.*, 376 U. S. 315 (1964) which reaffirmed that the exclusivity provisions of the Longshoremen's Act are not affected where the ship-

owner does not delegate the operation and control of the vessel to a third party. In *Italia* this Court, referring to the *YAKA* case (at p. 325, footnote 2) emphasized the three vital elements of the *YAKA* case which are not present here: the employer there was the charterer, a third person was the shipowner who had delegated operation and control to the charterer, and there was an express agreement of indemnity from the stevedore to the shipowner, saying:

> "*Reed* v. *The YAKA*, 373 U. S. 410, held only that a longshoreman could bring suit for unseaworthiness against a stevedoring company which chartered a ship and was the longshoreman's employer. In that case no issue as to an implied warranty of workmanlike service arose because the stevedoring company had agreed in any case to hold the shipowner harmless without regard to negligence."

Furthermore, to allow suits for damages where there is no third person involved would violate the economic standards of the Act because the employer's right to subrogation, assignment, and deficiency compensation would be curtailed or destroyed in direct contradiction of the principles set forth in the *YAKA* case. These rights of the employer remain intact and the economic standards of the Act are not violated, so long as there is a third person involved. But these rights cannot be exercised by permitting a direct suit against an employer-shipowner where there is no third party, and the result would be to impose a greater financial burden on the shipowner-employer contrary to the economic standards of the Act.

To urge that because the maritime law is so ancient, the liability of a shipowner to his employee for damages under

such law is not displaced or affected by the liability of the employer to his employee for compensation, emphasizing that a longshoreman has the right to damages for unseaworthiness because he performs the work of a seaman, misconceives the question. If this were true, seaman Johansen (in *Johansen* v. *United States*, 343 U. S. 427, relied on by Mr. Justice Black in *Demko* as a "typical" case of recognition that the right of recovery "by such compensation laws is exclusive") who sought damages against the government shipowner-employer for the "unseaworthiness of his vessel" and for "maintenance and cure" would have been able to recover such damages from his employer despite the exclusivity provision of the Federal Employee's Compensation Act, but this Court held exactly the opposite in restricting the liability of the shipowner-employer to the seaman-employee to compensation.*

The personal liability which made the vessel liable *in rem* in *YAKA* could not have followed without the delegation of the operation and control of the vessel to the third-party bareboat charterer and the resulting obligation to indemnify the original owner.

This was Judge Learned Hand's reasoning in the second *Grillea*** decision and so recognized by the Second Circuit in *Bennett* v. *The MORMACTEAL*, 254 F. 2d 138 (1958) in its adoption of the district court's opinion reported at 160 F. Supp. 840. There he held that although the liability

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* *Johansen* held that the 1949 amendments to the Federal Employees Compensation Act adding subsection (b) of 5 U. S. C. §757 (now subsection (c) of 5 U. S. C. §8116) did not alter the exclusivity of the compensation remedy for government employed seamen.

** *Grillea* v. *United States*, 232 F. 2d 919 (2 Cir. 1956). The first *Grillea* decision cited by Mr. Justice Harlan in his *YAKA* dissent decided only the question of the liability of the demisor-owner, *in personam*, holding that it was not so liable. *Grillea* v. *U. S.*, 229 F. 2d 687 (2 Cir. 1953).

of the demisee (bareboat-charterer-employer) to his employee was only for compensation under the Longshoremen's Act, "the injuries to the employee" in breach of the indemnity contract with the demisor "measure the damages for the breach" and made it a case of personal liability for unseaworthiness similar to the *Ryan* case, cited at footnote 9 of his opinion. In view of this holding of personal liability, Judge Hand (as in the *YAKA* case) found it unnecessary to decide "the question whether a maritime lien can be imposed upon a ship for a claim on which no jural person is liable 'in personam'."

Since the circumstances in this case do not involve any liability to a third party, the holding that the petitioner is liable "to the employee" beyond compensation would be in actual and specific contravention of section 5 of the Longshoremen's Act and is not justified by the *YAKA* decision.

## CONCLUSION

**The petition for writ of certiorari should be granted.**

Respectfully submitted,

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